

## IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

First : Robert Bruce Spertell  
Named Inventor  
  
App. No. : 09/637,923  
  
Filed : August 14, 2000  
  
For : **METHOD AND APPARATUS FOR  
TREATING SUBCUTANEOUS  
HISTOLOGICAL FEATURES**  
  
Examiner : Fadi H. Dabour  
  
Art Unit : 3742

STATEMENT OF RAYMOND A. BOGUCKI SUPPORTING UNINTENTIONAL  
ABANDONMENT UNDER 37 C.F.R. § 1.137(b)

I, Raymond A. Bogucki, Esq. do hereby state as follows:

1. I am a citizen of the United States and received my law degree from the University of Minnesota in 1952. I am now and since approximately 1999 have been a solo law practitioner with a place of business most recently at 6914 Canby Ave., #109, Reseda, CA 91335. Prior to entering a solo practice I was a patent attorney employed by RCA Corp. from 1952-1955 and by Hughes Aircraft Company from 1955-1959. From 1959-1990 I was a partner in the law firm of Fraser and Bogucki in Los Angeles and from 1990 -1999 I was a patent attorney and shareholder in the intellectual property law firm now known as Merchant & Gould and then having a place of business principally at 11150 Santa Monica Blvd., Los Angeles, CA 90025-3395. I am a member of the

California State Bar and have been registered to practice before the United States Patent and Trademark Office since 1953 (Reg. No. 17,426).

2. I have reviewed the Decision on Petition mailed May 30, 2008 dismissing the petition to revive the above-identified application under 37 C.F.R. § 1.137(b).

3. Prior to the year 2000 I was retained to prepare and prosecute patent applications assigned to MW Medical and its wholly-owned subsidiary Microwave Medical Corporation (collectively "MW Medical", both of which shared the same correspondence address and management team). These patent applications included U.S. Patent Application No. 08/904,175 filed July 31, 1997, now U.S. Patent No. 6,104,959 to Robert B. Spertell. I was also retained to prosecute the parent application of the '923 Patent that was assigned from the inventor Robert B. Spertell to Microwave Medical Corp. The assignment document expressly assigned all continuation and divisional applications (such as the '923 Application), and was recorded in the U.S. Patent and Trademark Office on July 31, 1997 at Reel 008662 and Frame 0965.

4. The '923 Application is the present application at issue. On August 9, 2000 I was provided with a Power of Attorney to prosecute that application. Besides myself, others, specifically including Douglas R. Hanscom, were also provided with a Power of Attorney. See Exhibit 1 (SL1). I, along with Mr. Hanscom were the only attorneys known to me who had first hand knowledge of the prosecution and abandonment.

5. At the time of the filing of the '923 Application on August 14, 2000 I was a solo practitioner with a continuing but self-limited practice essentially confined to prior clients. I assisted with the prosecution of the '923 Application by providing general

guidance and specific patent prosecution information. My Washington associate, Mr. Hanscom, was designated as responsible for the filings, docketing and receipt of Patent Office correspondence pertaining to the application since he was then overseeing for the client at least the foreign application on the subject matter of the '923 application. I had limited interaction with the Patent Office when matters arose as to the application after the filing although Mr. Hanscom updated me with the progress of the application and copied me on all correspondence that he sent directly to MW Medical. At no time was I advised that the patent work was to be discontinued. Subsequent to the filing of the application, the inventor, Dr. Spertell left the company and management functions were at that point solely within the purview of the Scottsdale office.

6. Around mid-June 2002 I received a copy of a letter dated June 12, 2002 directed from Mr. Hanscom to Grace Sim, the Chief Financial Office of MW Medical, Inc., stating that an Office Action had been received for the '923 Application. See Exhibit 4. At that time, I was aware that MW Medical, Inc. and Microwave Medical Corporation were undergoing financial problems but I was not aware of the company's specific financial difficulties. Management at that time was primarily only at the Scottsdale office and the personnel at the operating facility in Simi Valley, CA were essentially uncommunicative on financial matters.

7. At some point between June 12 and June 19, 2002, Mr. Hanscom informed me that a letter sent to Ms. Sim at the MW Medical, Inc. address of 6617 N. Scottsdale Road, Suite 103, Scottsdale, AZ 85253 had been returned by the post office. On June 19, 2002, Mr. Hanscom sent me a copy of the letter to Ms. Sim dated June 12, 2002 asking if I had any suggestions on how to handle the matter. See Exhibit 6.

Unfortunately, the only address that I had for MW Medical, Inc. was the Scottsdale, AZ address that he had sent the letter to. No other address had been provided to me by MW Medical, Inc. or Microwave Medical Corporation personnel. I also did not have any working telephone numbers for the companies in my file.

8. Between the time of receipt of the first Office Action and the date upon which the application became abandoned on September 6, 2002, I had multiple interactions with Mr. Hanscom. Together, we tried various methods of communication to reach MW Medical personnel, including letter and telephone, without any success. As we were unable to obtain any instructions from the client due to our inability to communicate with the client, no response was filed to the outstanding Office Action of the present application by the September 5, 2002 deadline. At no point in time did I ever receive any affirmative instructions from Ms. Sim or anyone else at MW Medical, Inc. to let the application go abandoned. My understanding was that MW Medical, Inc. at that time was essentially defunct, so that no further action was taken by myself or Mr. Hanscom in connection with the present '923 Application.

9. After the present application became abandoned on September 6, 2002, Mr. Hanscom and I continued to attempt to establish contact with MW Medical both in Simi Valley and Scottsdale. However, new numerous attempts to contact said personnel were ineffective and, because I was not attempting to generate or enlarge my practice, no further action was taken on my part. As an attorney who had received no instructions on how to proceed with the application, I was unaware of whether the client wanted to abandon the application and was simply not in a position to revive the abandoned application on my own without instructions. It was not until circa October 2007, that I

was contacted by Mark Deem, who was interested in acquiring the assets of MW Medical, Inc. and Microwave Medical Corporation. Only then did I learn that MW Medical, Inc. had assigned the rights of the '923 Application to Jan Wallace in 2003, and that she had later transferred the rights to Miramar Labs in 2007. I also understood from this that Jan Wallace did not intend for the '923 Application to be abandoned, and immediately agreed to work with representatives of Miramar Labs so they could diligently revive the application.

10. I believe that the entire delay from the time of abandonment of the '923 Application, to the filing of the revival petition on March 7, 2008 was unintentional, from the fact that client contact could not be made and because there was no knowledge of the decision of Jan Wallace to pursue prosecution of the patent application.

11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued therefrom.

Date: \_\_\_\_\_

September 12, 2008

Raymond A. Bogucki  
Raymond A. Bogucki, Esq.